

ANALYSIS

This ordinance extends through December 31, 2004, the term of the petroleum pipeline franchise granted to the United States of America, by Ordinance No. 11,854, and amends the franchise to prohibit the transportation of any hazardous substances or hazardous waste within the meaning of the "Comprehensive Environmental Response Compensation and Liability Act of 1980," 42 U.S.C. section 9601 et seq., and amendments thereto. This ordinance further amends the franchise to exclude incorporation by reference of a provision in the County Master Pipeline Franchise Ordinance, Ordinance No. 11,696, requiring the United States of America to indemnify the County, as pursuant to the Federal Anti-Deficiency Act, an officer or employee of the United States of America cannot agree to indemnify the County.

This ordinance acknowledges that within the limits of the Federal Torts Claims Act, 28 U.S.C. sections 2671-2680, the United States of America remains fully responsible for any claim, demand, injury or damage to any person or property resulting from operation of this franchise.

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By
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11/18/03 (requested)

11/18/03 (revised)

ORDINANCE NO. _____

An ordinance to extend through December 31, 2004, the term of the petroleum pipeline franchise granted to the United States of America, by Ordinance No. 11,854, and to prohibit the transportation of any hazardous substances or hazardous waste within the meaning of the "Comprehensive Environmental Response Compensation and Liability Act of 1980," 42 U.S.C. 9601 et seq., and amendments thereto. The ordinance further amends the franchise to exclude incorporation by reference of a provision in the County Master Pipeline Franchise Ordinance, Ordinance No. 11,696, requiring the United States of America to indemnify the County.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Section 1 of Ordinance No. 11,854 is hereby amended to read as follows:

Section 1. The right, privilege, and franchise is granted to the United States of America ("Franchisee"), and its successors and assigns, through December 31, 2004, to lay or construct, reconstruct, ~~from time to time and for twenty five (25) years to~~ maintain, operate, repair, renew, change the size of, remove or abandon in place pipes and pipelines for the collection, transportation, and distribution of oil, petroleum, gas, gasoline, or other hydrocarbon substances, wet gas, chemicals, mud, steam, water, waste water, and other liquid substances, ~~for any purpose, excluding any hazardous~~ substances or hazardous waste within the meaning of the "Comprehensive

Environmental Response Compensation and Liability Act of 1980," 42 U.S.C. section 9601 et seq., and amendments thereto, together with all manholes, valves, cathodic protection systems, appurtenances, and service connections necessary or ~~convenient~~appropriate for the operation of said pipes or pipelines, including poles, conduits, wires, cables, and other appurtenances and equipment for telegraph or telephone lines or both, necessary or ~~convenient~~appropriate for the Franchisee's ~~business~~operations, in, under, along, or across any and all highways now or hereafter dedicated to public use in the unincorporated territory of the County of Los Angeles, State of California.

SECTION 2. Section 4. of Ordinance No. 11,854, is hereby amended to read as follows.

Section 4. In addition to the terms and conditions herein, this franchise is granted under the same terms and conditions contained in Article I, Part 2 of Ordinance No. 11,696 of the County of Los Angeles, entitled "An Ordinance Providing Terms and Conditions to be Included in Pipeline Franchises for the Collection, Transportation or Distribution of Gas, Oil, Hydrocarbon and Other Liquid Substances, Hereinafter Granted by the County of Los Angeles," adopted April 11, 1978, as if they were contained in this ordinance-, excluding Part 1, Article 1, section 117 as incorporated by reference in Part 2 of said Ordinance No. 11,696, and codified at Los Angeles County Code section 16.52.180, regarding indemnification by Franchisee. Said exclusion is required because agencies of the federal government are prohibited from agreeing to such indemnity provisions under the Anti-Deficiency Act, 31 U.S.C. section 1341(a)(1)(B), which states

in pertinent part: "An officer or employee of the United States Government or of the District of Columbia government may not involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law." Notwithstanding the above, within the limits of the Federal Torts Claim Act, 28 U.S.C. sections 2671-2680, and relevant California law as applied thereunder, Franchisee remains fully responsible for any claim, demand, injury or damage to any person or property resulting from operation of this franchise.

In the event the terms and conditions hereof conflict with the terms and conditions of said Ordinance No. 11,696, the terms and conditions hereof shall control.

[USAPetroleumFranchise]